

ORIGINAL

EXCEPTION

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF UTILITY SOURCE, LLC, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY
PLANTS AND PROPERTY AND FOR
INCREASES IN ITS CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO. WS-04235A-13-0331

Arizona Corporation Commission

DOCKETED

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DOCKETED BY

MLB

RESPECTFULLY SUBMITTED this 2nd day of September, 2015.

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**Original and thirteen (13) copies of
the foregoing filed this 2nd day of
September, 2015, with:**

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 **Copy of the foregoing emailed this**
2 **2nd day of September, 2015, to:**

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17

18 **EXCEPTIONS**

19 Terry Fallon, an intervener in the above referenced case, hereby files the following
20 Exceptions to the Recommended Opinion and Order ("ROO") in the matter of Utility
21 Source, LLC's (or the Company) application for a revenue increase in both water and sewer
22 rates.
23

24 **INTRODUCTION**

25 ALJ Scott Hesla's opinion regarding the rate case increase as requested by the Company
26 all but dismisses not just those points and facts made by intervener Erik Nielsen and I but
27 RUCO's as well. Fifty nine households out of 326 submitted public comments to the ACC
28 stating the extreme financial hardship the proposed rate increase would do to them and their
families. Two hundred and eleven community members signed a lawful and legal petition
stating the same which was also submitted to the ACC. How can any public official assume

1 that an 86% increase in water rates and another 159% increase in sewer costs is fair and
2 reasonable? The average household income in this community is approx fifty five thousand
3 dollars a year. Many of the community residents have not have an employer merit increase
4 in years due to the recession and economic factors now present in the Country. On
5 September 2, 2014 I submitted Exhibits A through D in my written testimony. I specifically
6 issued Exhibit B, an economic breakdown of this community's financial makeup. This data
7 from "City Data" is a recognized and useful tool used not only by real estate companies
8 but by city and county officials as well. City Data stated that Bellemont Arizona has a
9 **"median household income significantly below state average", a "median household**
10 **value significantly below state average, and an "unemployment average significantly**
11 **above state average"**. ALJ Hesla makes no mention of these facts in his opinion nor were
12 they considered.

13 **STANDPIPE ISSUES**

14 Courtroom testimony by Company owner McCleve stated the Company was making
15 between \$5000 to \$6000 per month for the time period of September 2014 until January of
16 2015. Typically, those four months of the year are some of the lowest for water usage and
17 consumption for the vast majority of standpipe users. Starting in May through September,
18 water usage and consumption by standpipe users will double or in certain months, triple.
19 Therefore, it is reasonable to assume the Company's standpipe revenues can average a
20 minimum of \$10,000 or more per month during this time period. ALJ Hesla response is to
21 have the Company file biannual standpipe sales starting on September 31, 2015 and not
22 have the standpipe sales considered until 2019. The Company's mantra during the
23 courtroom hearings were "we're not making a profit". They have in fact been making a
24 sizable amount of earnings since the standpipe's opening in 2014. Not considering the
25 standpipe sales revenues to the proposed rate increases is grossly unfair to the consumers
26 and allows the Company to reap high profits without regard to consumer rates.

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2 **CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC)**

3 ALJ Hesla states in his ROO in regards to CIAC that "even assuming the plant items
4 identified by Mr. Nielsen were paid for with developers funds, there is no evidence
5 documenting the amount of plant, if any, not recognized as CIAC in the previous
6 Commissions decisions"... and "Similarly, there is no evidence documenting the amount of
7 hookup fees, if any, not recognized as CIAC in previous Decisions". The lack of evidence
8 required by ALJ Hesla to be submitted by Mr. Nielsen is absurd. Mr. Nielsen and I are
9 private citizens without the power or authority to peruse the Company's files, receipts, or
10 any other documentation. ALJ Hesla relies on Mr. McCleves statement that the Company no
11 longer has any information. Why take the word of the Mr. McCleve and not Mr. Nielsen? It
12 was revealed during courtroom testimony that the Company, as of Oct 2014, did in fact
13 collect a hook up fee from Lot 30 of Flagstaff Meadows. It was only by chance that this hook
14 up fee was discovered by Mr. Nielsen and probably due to the fact that the owner of Lot 30
15 lives next door to Mr. Nielsen. Did ALJ Hesla order an audit of the Company's books to
16 ensure this hasn't happened before? Did ALJ Hesla also ask that for an audit of the
17 Company's books to verify there is no longer any documentation regarding developer's fees
18 used for CIAC? For ALJ Hesla to place the burden of proof on me or Mr. Nielsen is
19 unreasonable and without merit.

20 **SHARED OFFICE SPACE, TELEPHONE, COPY MACHINE, SUPPLY EXPENSES**

21 ALJ Hesla states in his ROO under Shared Office Space and Office resources "The
22 Company did not submit time sheets or other evidence to rebut the evidence of Ms. Parry's
23 shared duties and obligations with the other entities and individuals sharing the Utility
24 Source office space". ALJ Hesla then recommends a 20% of the Company's test year
25 expenses. Is ALJ Hesla use of 20% mean there are only five entities using the office space
26 as noted? He makes no mention of only five other entities using the office space in his ROO
27 nor was there any mention of this in any of the written or courtroom proceedings. It is highly
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1 likely that up to eight other entities are using the office space described. ALJ Hesla did not
2 confirm how many entities are actually using the office space therefore this percentage is
3 assumed, not verified. If eight other entities are in fact using this space the fair allotted
4 percentage should 12.5% During courtroom testimony Mr. McCleve admitted to using his
5 wife and daughters cell phones as "Company expenses" then stated it "probably wasn't the
6 best way of doing it". Mr. McCleve then stated this arraignment wouldn't continue in the
7 future. ALJ Hesla reaffirmed this in his ROO. The adjusted telephone expense of \$3,786, as
8 deemed by ALJ Hesla, is questionable. There are four cell phone users involved with the
9 Company: Mr. McCleve, co-owner Mr. Bulechek, Company engineer Mr. McCaleb, and Ms.
10 Parry. This amounts to \$946 per year, per user. The Company did submit phone bill records
11 during the proceedings that were padded with Mr. McCleve's wife and daughter's cell
12 phone
13 usage. The calls made by the users cannot be confirmed that the calls were in fact for
14 Company business only. Until a verified, substantiated use of calls made for Company
15 business is established, then Mr. Nielsen's Company telephone expense of \$2,298.32 is fair
16 and reasonable. The question of how many entities actually share/use the copy machine
17 and supply expenses is brought up again in ALJ Hesla's ROO. ALJ Hesla's use of 20%
18 of the Company test year is an assumption only. This allows an expense of \$3,617 and
19 \$954, for the Water and Wastewater Divisions, respectively. ALJ Hesla does not know how
20 many entities are actually involved with the expenses described so the 20% allocation is
21 questionable at best. Until it is confirmed how many entities are actually using the said office
22 copier and supply expenses then Mr. Nielsen's valuation of \$678 and \$596 respectively, is
23 fair and reasonable.

24 25 **WATER SYSTEM PRESSURE/FIRE HYDRANT ISSUES**

26 In my Final Brief submitted on April 10. 2015 I went into great detail outlining the dates and
27 times of when the fire hydrant system failed and the obvious lack of any usable
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1 documentation between the Company and the Ponderosa Fire personnel. Mr. McCleve
2 stated the back-up generator and other issues have been resolved. ALJ Hesla agrees that
3 the Company be ordered to conduct an engineering analysis to address the fire hydrant flow
4 and pressure failures. While I concur with this recommendation the Company must be
5 ordered not to pass this expense onto the consumers. When the Company applied to
6 Coconino County to develop the area they also agreed to provide adequate water flow and
7 pressure to the fire hydrant system (see Exhibit A, Resolution # 2101, Coconino County
8 Planning and Zoning Commission, section 13, page 7/17, as submitted by this intervener on
9 September 2, 2014). It is without question they have failed in this area as evidenced by
10 written and courtroom testimony therefore the consumers should not have to pay for this
11 expense due to the Company's failure to provide a reliable fire hydrant system as agreed to.
12 ALJ Hesla makes no mention of fines or other legal actions levied against the Company for
13 their failure to provide for the public safety in regards to the failed fire hydrant system. This
14 failure by the Company is not an isolated incident but has occurred at least three times a
15 year for the past several years. The Company's blatant disregard for the community's
16 safety
17 and well being are without excuse and must be addressed by the ACC.

18 **CLOSING STATEMENT**

19 Throughout this case, regardless of the proposed water and sewer increases, the Company
20 has shown contempt and disregard for State and County Statutes and Codes. This first
21 became apparent with the Company's failure to disclose to the ACC its newly created
22 stand-
23 pipe. The Company's excuse for the lack of disclosure of the standpipe to the ACC was
24 highly suspect at best. ALJ Hesla makes no reference to this nor does he issue any
25 sanctions, fines, or penalties against the Company. The Company then testified that they
26 were "forced" by the County to spend an exorbitant amount of funds to construct the
27 standpipe. This later proved to be false when Mr. Nielsen provided a letter from the County
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1 to the Company only requiring that they meet all required Codes and Ordinances when
2 constructing the standpipe with no mention of any required Company costs. The Company
3 also tried to incorporate non Company members cell phone bills into their costs as well as
4 their supposed office space expenditures in an effort to pad their Company expenses.
5 These actions by the Company show a deliberate pattern of deceit and failure to disclose.
6 Mr. Nielsen and I both have requested the ACC have a third party neutral independent
7 agency perform a complete and full audit of all the Company's books, records, papers, etc.
8 Under the Arizona Constitution, Article 15, Corporation Committee, Sections 4, 16, and 19 it
9 states:

10 4. Power to inspect and investigate

11 **Section 4. The corporation commission, and the several members thereof,**
12 **shall have power to inspect and investigate the property, books, papers,**
13 **business, methods, and affairs of any corporation whose stock shall be**
14 **offered for sale to the public and of any public service corporation doing**
15 **business within the state, and for the purpose of the commission, and of the**
16 **several members thereof, shall have the power of a court of general**
17 **jurisdiction to enforce the attendance of witnesses and the production of**
evidence by subpoena, attachment, and punishment, which said power shall
extend throughout the state. Said commission shall have power to take
testimony under commission or deposition either within or without the state.

18 16. Forfeitures for violations

19 **Section 16. If any public service corporation shall violate any of the rules,**
20 **regulations, orders, or decisions of the corporation commission, such corporation**
21 **shall forfeit and pay to the state not less than one hundred dollars nor more than five**
22 **thousand dollars for each such violation, to be recovered before any court of**
competent jurisdiction.

23 19. Power to impose fines

24 **Section 19. The corporation commission shall have the power and authority to**
25 **enforce its rules, regulations, and orders by the imposition of such fines as it may**
26 **deem just, within the limitations prescribed in section 16 of this article.**
27
28

1 In July of 2015 SWI, Inc along with developer Jim Watson held a meeting at the Pondersa
2 Fire Station to advise community members they have approved County Plans to develop
3 approx 40 acres of land one mile West of Bellemont in the Fall of 2015. The developers
4 advised the community they would be building 284 modular homes sites along with ten
5 acres dedicated to RV and Motor Home seasonal use. They also advised they would be
6 getting their water needs from Utility Source. In July I forwarded all this information along
7 with detailed plot maps and locations, provided by SWI, Inc; to ACC staff members Wesley
8 Van Cleve and Matthew Ladone specifically requesting this information be provided to ALJ
9 Hesla.

10 With the Company reaping lucrative proceeds from their standpipe sales now plus the
11 guarantied near future monetary proceeds from the soon to be constructed modular home
12 park, it is grossly unfair and unreasonable for this community to suffer from the outrageous
13 rate increase proposals as suggested by ALJ Hesla or the Company. In 2007 the Company
14 received a 111% increase in water and sewer rates. How many more rate hikes will have to
15 be imposed on this community until the Company declares itself "solvent".

16 There are four full time employees that are on the payroll for the Company at this time: Mr.
17 McCleve, Mr. Bulechek, Jeremy McCaleb, and Maryanne Pary. As of this date the
18 average monthly water bill in the community is approx \$60. There are 326 individual
19 households in Bellemont (221 single family homes and 105 townhomes). Per ALJ Hesla's
20 recommendation that \$60 monthly water bill will jump up to \$209. That is a Company profit
21 of \$48, 574 per month and a yearly profit of \$582,888. Again this is not considering the
22 standpipe sales or the future proceeds from the modular home park. This seems overly
23 excessive for a company with four full time employees.

24 The Company, although deemed as a utility, is privately owned. Mr. McCleve testified that
25 the Company "has never made a profit" since its inception. If the Company cannot remain
26 solvent without unreasonable rate hikes and price gouging its consumers now may be the
27 time for Coconino County to take over all aspects of the water and sewer divisions of the
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1 Company in an effort to keep water and sewer costs fair and reasonable.
2 On February 19, 2015 I testified that no one in this community has ever spoke out against
3 the Company making a profit. The majority of community members only want fair,
4 reasonable, and affordable water and sewer rates. This intervener humble and respectfully
5 asks that the Arizona Corporation Commission carefully consider the financial hardship
6 and negative impact the proposed Company and ALJ Hesla's water and sewer rate
7 increases will have on the community.